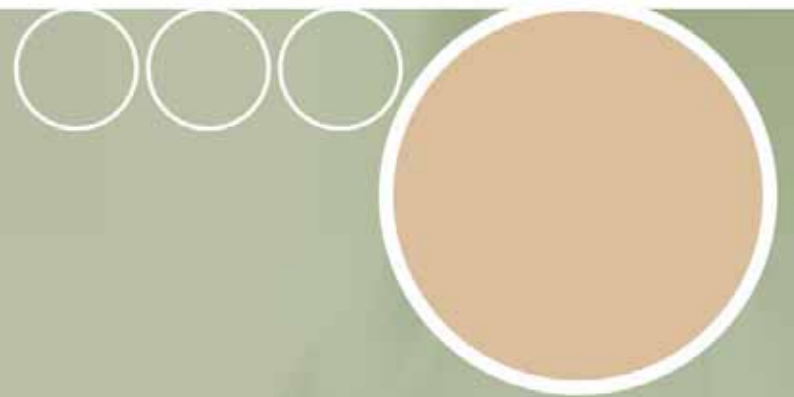


Briefing to AQCC: Update on EPA's GHG Tailoring Rule

**Colorado Air Quality Control
Commission**

February 18, 2010



Outline

- **Recent EPA actions on Greenhouse Gases**
- **EPA Tailoring Rule**
- **Comments to EPA on the Tailoring Rule**
- **Potential Implications to SIP and Industry**
- **Timing and Programmatic Issues**

EPA Actions Leading Up To GHG Tailoring Rule

1

- **Mass v. EPA (2007)**

- Held that GHGs are “air pollutants” within the meaning of the CAA
- Asked EPA to determine if GHG emissions from cars endanger public health and welfare

2

- **Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act (2008)**

3

- **Johnson Memo (2008) – “Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program”**

- Determined facilities should be required to obtain Prevention of Significant Deterioration (PSD) permits only for pollutants that are controlled under the Clean Air Act

4

- **Reconsideration of Johnson Memo (2009) – Comment period closed 12.07.09**

- EPA Endangerment Finding may render this moot

5

- **EPA Endangerment Finding (2009)**

- Current and projected GHG concentrations in the atmosphere threaten the public health and welfare of current and future generations
- Combined emissions of GHGs from new motor vehicles and engines contribute to GHG increases in atmosphere

EPA's Roadmap to GHG Regulation

GHG Endangerment Finding

Finalized Dec. 7th, 2009

EPA/DOT Federal Vehicle Standards (CAFE and GHGs)

To be finalized March 2010

PSD and Title V GHG Tailoring Rule

To be finalized March 2010

EPA/DOT Federal Vehicle Standards

EPA/DOT Federal Vehicle Standards

- Current federal tailpipe standards (27.3 MPG fleet avg.)
- Proposed federal tailpipe standards:
 - 35.5 MPG fleet avg. and,
 - <250 g/m CO₂
 - 49 U.S.C. 32902 - Average fuel economy standards
 - Section 202(a) of the Clean Air Act
- Phasing starts w/2012 models; ends in 2016
- Effective date ~ March 2010
- No direct Division impact, but triggers GHG regulation from all sources nationally

EPA's Proposed GHG Tailoring Rule

EPA's Proposed GHG Tailoring Rule

- Rule published in the Federal Register Oct. 27th, 2009 – comments due Dec. 28th, 2009
- Administrative Necessity/Absurd Results Doctrine
 - At 100 tpy, millions of industrial, commercial and residential sources that would be subject based on CO2 alone
 - Permitting Program impacts
 - Economic impacts
- Fast-tracked to precede release of new vehicle standards in March 2010
- Required 90-day White House (OMB) review likely to be shortened

- 3 ex. of sources & associated actual emissions: Nixon Unit 1, Penrose Hospital, Williams Maam Cr., Adams Mark Hotel
- Typical 0.5 MMBtu/hr nat.gas boiler emits >250 tpy CO2

Proposed Tailoring Rule

What it would do...

- Temporarily increases Title V/PSD permitting thresholds for major stationary sources
 - 5 yr evaluation
 - 6th yr report
- Sets a $\geq 25,000$ tpy threshold
- Corrects approved SIPs for permitting major stationary sources
- Commits to developing BACT guidance and permit streamlining efforts

What it won't do...

- Set CO₂e NAAQS
- Establish BACT for GHGs
- Change permitting thresholds for minor stationary sources
- Set presumptive fee (allows States to evaluate)

Threshold Comparison for Major Sources

Existing CAA Thresholds

- **PSD**
 - **New**
 - **Listed Sources: ≥ 100 tpy**
 - **All Other Sources: ≥ 250 tpy**
 - **Mod**
 - **Significant modification levels set per pollutant**
 - **None for GHGs, so any increase (≥ 0 tpy)**
- **Title V: ≥ 100 tpy**

Proposed Tailoring Rule

- ***PSD***
 - ***New (listed or not): $\geq 25,000$ tpy***
 - ***Mod: $\geq 10,000$ -25,000 tpy increase***
- ***Title V: $\geq 25,000$ tpy***

Potential Affected Source Categories

MAY BE AFFECTED BY TAILORING RULE:

- **Power Plants**
- **Oil & Gas**
- **Landfills**
- **Large Manufacturing Facilities**
- **Ethanol Plants**
- **Military Bases**
- **Hospitals**
- **Colleges**
- **Breweries**
- **Mines**
- **Wastewater Treatment Facilities**
- **Food Processing Facilities**

Technical/Administrative Concerns

APCD commented to the EPA on the Proposed Tailoring Rule:

- 1. EPA needs to provide extra time due to admin. Burden**
- 2. EPA should raise PST/TV limit to 50,000 tpy; lowered to 25,000 tpy after 3 years**
- 3. EPA should set presumptive fees**
- 4. Number of sources affected by Rule underestimated**
- 4. Timely BACT guidance and NSPS standards to states is necessary**
- 6. Concern over precedent for opening and “fixing” SIPs**

Proposed 2011 EPA budget includes \$25 million nationwide for CAA GHG implementation

Timing Options

- **GHG PSD/Title V Permitting requirements may become effective upon:**
 - Promulgation of Light Duty Vehicle Rule (~3/10)
 - Effective date of Light Duty Vehicle Rule (TBD)
 - Compliance date of Light Duty Vehicle Rule (~2012)
 - Somewhere in between...
 - Date Title V Operating Permit applications are due (1 year after trigger Title V Operating Permit requirements)
- **Proposed Tailoring Rule must precede GHG control requirements**
- **Timing will determine how quickly the APCD will move to initiate rulemaking before the AQCC**
 - Emergency rulemaking options
 - Normal rulemaking options

Possible Actions for AQCC

- **SIP approval is based on having necessary resources and authority to implement**
- **Without correction, current SIP approval status may be called into question**
- **EPA is correcting SIP specific to the PSD Permitting Program via proposed Tailoring Rule**
 - **CAA § 110(k)(6)**
 - **allows EPA to make corrections to a SIP**
 - **no requirement for agency involvement/approval**
 - **little precedent**
 - **Limit existing approval to implement the PSD Permitting Program to $\geq 25,000$ tpy CO₂e**

Possible Actions for AQCC

- **What the AQCC can expect to see flowing from the Tailoring Rule**
 - Need conforming changes to AQCC regulations to address Tailoring Rule once finalized
 - Emergency rule for Reg. 3 to conform to the Tailoring Rule (depends on implementation date of Tailoring Rule)
 - Standard rulemaking (summer 2010)
 - Potential permit appeals or permit hearings
 - Adopt parallel thresholds for minor stationary sources (and revise SIP)
- **Associated technical considerations**
 - APEN requirements
 - Emission factors
 - Annual fees
 - Permit streamlining
 - BACT development
 - Outreach

Questions?



CDPHE Climate Change Website:

<http://www.cdphe.state.co.us/climate/index.html>